

privilege in question, deny it, and make it the subject of contest, the objection could not be maintained.

It seems to me, that if the testator had designed to revoke the privilege in question, and throw these parties altogether upon other sources of supply for their wood and timber, he would have done so in express terms and not have left it to implication. He certainly does not do so in express terms, nor is there such an inconsistency, or conflict, between the provisions of the will and codicil that both may not well stand together.

That the weight of the burden to be borne by the Anne Arundel county land, was intended to be diminished by the purchase of the land mentioned in the codicil, is, I think, quite apparent; and, therefore, in estimating the value of that burden, and the corresponding privilege, it was the duty of the parties selected for the purpose, to take that circumstance into their consideration; and we are told by Dr. Cheston, one of those parties, that they were aware of it, and of the rights of Mr. Smith, under the will and codicil of his father, which were before them.

It must, therefore, be presumed, that the proper weight was given by the commissioners to this source of supply, and more especially would the court be indisposed to reject their valuation for this reason, when the petitioners themselves did not make the objection in their petition, so as to give the other side an opportunity of denying it in their answer, and rebutting it by proof.

My opinion is, that the maxim *omnia rite esse acta præsuntur*, is applicable to the proceedings of these commissioners, and that although they were required to report to the court, subject to its further order and direction, yet still, every fair intendment should be made in support of their acts.

They were authorized and required to make the valuation upon oath, according to the best of their judgment, and this they say they did; and by no allegation in the petition is their judgment in this respect called in question.

In the case of *Cecil vs. Dorsey et al.*, this court was recently